IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR

J U D G M E N T

Ganpati Property Vs. Shankar Lal
S.B. CIVIL FIRST APPEAL NO.731/2004

Against judgment and decree dated 29.10.2004 passed by Addl. District Judge No.2, Jodhpur in Civil Original Suit No. 93/2002 – Sankarlal Vs. Ganpati Property Dealing.

DATE OF JUDGMENT: 3rd May, 2006.

PRESENT

HON'BLE MR.JUSTICE SATYA PRAKASH PATHAK

Mr. B.K. Bhatnagar for appellant.
Mr. C.S. Kotwani for respondent.

BY THE COURT:

This is an appeal by original defendant in Civil Original Suit No. 93/2002 – Sankarlal Vs. Ganpati Property Dealing challenging the judgment and decree dated 29.10.2004 passed by Addl. District Judge No.2, Jodhpur decreeing the suit of the plaintiff for recovery of Rs.72,000/- with interest @ 9% from the date of filing of suit till realization.

The original plaintiff, filed the aforesaid civil suit on the averments in the plaint that he lured by the advertisement published by defendant purchased Plot No.62 of Khasra No.13 at Sangariya for a consideration of Rs.60,000 and in total paid an amount of Rs.49,000/- against various receipts. According to him the balance amount of Rs.11,000/- was agreed to be paid at the time of registry of the plot, however, thereafter it came to his knowledge that the plot in question which was agreed to be sold by the defendant to him was not in the ownership of the defendant but was the ownership of somebody else so he rebuked the defendant and asked for return of the money whereupon the defendant on 11.02.2001 in writing agreed to refund the amount by 15.07.2001 but despite repeated contacts the amount was not paid back. He claimed a sum of Rs.72,000/- calculating interest @ 12% on the sum of Rs.49,000 paid.

The case of the appellant-defendant is that on summons being issued under Order 37

Rule 2 CPC by the trial Court, he put in appearance before the Court on 21.04.2004 whereas the case was fixed on 06.05.2004 and when the counsel for the defendant appeared in the Court, it came to his notice that Vakalatnama and the registered address submitted by him on 21.04.2004 were not tagged with the file so he moved an application on 24.05.20004 for attaching the same with file after finding it out and for marking his attendance and in that pursuance his appearance was marked on 29.05.2004 and the matter was fixed for orders on 11.10.2004. Thereafter, on 11.10.2004 the trial Court vide its order granted leave to the defendant to defend his case on condition of his depositing Rs.50,000 within 15 days and fixed the matter for 26.10.2004. Against that order, the defendant filed S.B. Civil Revision Petition No.379/2004 before this Court and on 28.10.2004 interim stay order was passed staying the proceedings before the trial Court but despite information in writing regarding passing of the stay order the trial Court passed the decree for recovery of Rs.72,000/- with interest on 29.10.2004 and

ultimately as the suit had been decreed, the revision also came to be dismissed by this Court in view of the fact that the suit was decided.

Learned counsel for the appellant has submitted that in this case inspite of a stay order passed by the Hon'ble Court staying the proceedings in the matter before lower Court, the trial Court has passed the judgment and decree which is required to be set aside and the appellant is required to be given an opportunity to put his case before the learned trial Court. It has also been submitted that the learned trial Court vide order dated 11.10.2004 though allowed the appellant-defendant the right to defend the suit on the condition of depositing a sum of Rs.50,000/- within 15 days, however, as the amount could not be deposited in time further time was sought to deposit the amount in pursuance to the orders dated 11.10.2004 but the trial Court instead of granting time to comply the order, proceeded in the matter and decreed the suit under Order 37 of the CPC. Learned counsel

submits that this has caused a great hardship to him and prays for giving one more opportunity to comply with the orders passed by the trial Court on 11.10.2004 after setting aside the judgment and decree passed in the circumstances.

On the other hand, it has been submitted that infact the order passed by the High Court dated 28.10.2004 was submitted before the trial Court on 29.10.2004 after passing the judgment and decree and therefore the trial Court had no option but to pass the judgment and decree in view of the fact that compliance of order dated 11.10.2004 was not made.

After considering the submissions made before me, I am of the view that once the trial Court reached to the conclusion that in the facts and circumstances of the case the appellant was required to be permitted to defend his case and a condition was imposed for the purpose then particularly taking into consideration the fact that in the revision

petition referred to above, this Court stayed further proceedings before the trial Court on 28.10.2004, the interest of justice requires that the judgment and decree passed by the learned trial Court be set aside and the defendant be allowed time to defend his case on his fulfilling the condition of depositing Rs.50,000/- imposed by the trial Court vide its order dated 11.10.2004.

In view of foregoing discussions, the appeal is allowed, the judgment and decree dated 29.10.2004 passed by Addl. District Judge No.2, Jodhpur in Civil Original Suit No. 93/2002 – Sankarlal Vs. Ganpati Property Dealing is hereby set aside and the appellant-defendant is given three weeks' time to make compliance of the order dated 11.10.2004 passed by the trial Court. In case the appellant-defendant fails to comply with the condition within the stipulated time then the trial Court shall be free to proceed in the matter in accordance with law.

The record of the case be returned forthwith.

(SATYA PRAKASH PATHAK)J.

/jpa